IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Bail Appl..No. 5368 of 2007()

CRIME NO. 89/07 OF HEMAMBIKA NAGAR POLICE STATION

APPLICANTS/ACCUSED NO. 1 & 2

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1. ABDUL NAZAR, S/O.MUHAMMED HANEEFA,
NAYAKKAD, KODUVAYOOR, PALAKKAD DISTRICT.

2. MUTHU, S/O.PONNUCHAMMY,
MEPPADAN, VANDITHAVALAM, PALAKKAD DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.PRASUN.S

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
REPRESENTING THE S.I. OF HEMAMBIKA NAGAR POLICE
STATION.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5368 of 2007

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Dated this the 13th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2. They are employees employed in a hostel for tribal children. They face allegations, inter alia, under Section 3 of the SC/ST (Prevention of Atrocities) Act.

2. The crux of the allegations against the petitioners is that they indecently assaulted girl children belonging to Scheduled Tribe, who were inmates of the hostel. They were peeping into the bath room. The private parts of the children were touched and fondled. These are the allegations. Crime has been registered on the basis of the complaint filed by the learned Chief Judicial Magistrate in his capacity as the Child Welfare Committee. That complaint, in turn, has been filed after obtaining enquiry report from the official concerned. Investigation is in progress. The petitioners apprehend imminent arrest.

3. The learned counsel for the petitioners submits that the allegations even if accepted in toto, will not constitute an offence

under Section 3(1)(xi) of the SC/ST Act. In these circumstances the bar of Section 18 cannot apply. That contention in law is certainly acceptable. Application of Section 18 and deprivation of jurisdiction under Section 438 Cr.P.C. cannot obviously depend on the section shown in the F.I.R. by the person who registers the F.I.R. If the allegations even if accepted in toto do not reveal an offence punishable under the ST/ST Act, I am in total agreement with the learned counsel for the petitioners, that the bar of Section 18 cannot apply.

4. With a view to find out whether sufficient allegations constituting an offence under Section 3 of the SC/ST Act are there, I have called for the case diary and perused the same. I am satisfied that on facts, there is no substance in the contention that the allegations even if accepted will not reveal an offence under Section 3 of the SC/ST Act. A more detailed discussion does not appear to be necessary.

5. The learned Sessions Judge has taken note of the fact that the petitioners can surrender before the learned Magistrate and seek regular bail. It is by now trite and this Court has repeated the said proposition many times in the decisions in **Ali** v. **State of Kerala** (2000 (2) KLT 280), **Shanu** v. **State of Kerala** (2000 (3) KLT 452), **Krishnakumar**

v. **State of Kerala** (2005 (1) KLD (Cri.) 42) and **P.P. Kader** v. **State of Kerala** (2005 (1) KLD (Cri.) 250), that the mere fact that the offence under Section 3 of the SC/ST Act is triable by a Special/Sessions Court will not justify abdication of jurisdiction by the Magistrates under Section 437 Cr.P.C. The petitioners' applications for regular bail, needless to say, must hence be considered by the learned Magistrate on merits, in accordance with law and expeditiously as laid down in the decisions referred above.

6. This application is hence dismissed with the above observations.

(R. BASANT)
Judge

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